

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,
and Bernard L. Madoff,

Plaintiff,

v.

DELTA NATIONAL BANK AND TRUST
COMPANY,

Defendant.

Adv. Pro. No. 11-02551 (CGM)

STIPULATION AND ORDER

Plaintiff Irving H. Picard (the “Trustee”), as trustee of the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–*lll*, and the chapter 7 estate of Bernard L. Madoff, and defendant Delta National Bank and Trust Company (“Defendant,” and with the Trustee, the “Parties”), by and through their respective undersigned counsel, state as follows:

WHEREAS, on August 25, 2011, the Trustee commenced adversary proceeding number 11-02551 (the “Action”) against Defendant to recover subsequent transfers Defendant allegedly received from Fairfield Sentry Limited;

WHEREAS, on July 6, 2014, the District Court entered an Opinion and Order ruling on extraterritoriality and international comity issues (the “District Court ET Decision”) and returned certain matters to the Bankruptcy Court for further proceedings consistent with the District Court ET Decision. *See SIPC v. BLMIS (In re Madoff)*, 513 B.R. 222 (S.D.N.Y. 2014);

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing certain claims to recover subsequent transfers received from Fairfield Sentry Limited (among other initial transferees) on grounds of international comity. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

WHEREAS, the Bankruptcy Court ET Decision dismissed the claim against Defendant;

WHEREAS, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) (the “ET and Comity Decision”) which, *inter alia*, vacated the Bankruptcy Court ET Decision;

WHEREAS, on August 29, 2019, Defendant filed a Petition for a Writ of Certiorari in the Supreme Court, which sought review of the ET and Comity Decision and which extended the stay of the Second Circuit’s mandate until the Supreme Court’s final disposition. *See* Petition for Writ of Certiorari, *HSBC Holdings PLC v. Picard*, No. 19-277 (Aug. 29, 2019), 2019 WL 4190391;

WHEREAS, on December 20, 2019, the Trustee filed unopposed petitions for permission to appeal pursuant to 28 U.S.C. § 158(d)(2)(A), which respectively sought (i) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision denying the Trustee’s motion for

leave to file amended complaint in one adversary proceeding, *Picard v. Citibank, N.A.*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019), and (ii) a direct appeal to the Second Circuit of the Bankruptcy Court's memorandum decision granting, in part, the motion to dismiss the Trustee's amended complaint in another adversary proceeding, *Picard v. Legacy Capital Ltd.*, 548 B.R. 13 (Bankr. S.D.N.Y. 2013) (together, the "Good Faith Appeals");

WHEREAS, on April 23, 2020, the Court of Appeals for the Second Circuit granted the Trustee's petitions for the Good Faith Appeals. *See In re BLMIS LLC*, Case No. 19-4282 (2d Cir. Apr. 23, 2020), ECF No. 29; *In re BLMIS LLC*, Case No. 19-4283 (2d Cir. Apr. 23, 2020), ECF No. 25.

WHEREAS, on June 1, 2020, the Supreme Court denied Defendants' Petition for a Writ of Certiorari concerning the Second Circuit's ET and Comity Decision. *See Order, HSBC Holdings PLC v. Picard*, No. 19-277 (2020), 2020 WL 2814770;

WHEREAS, also on June 1, 2020, the Court of Appeals for the Second Circuit issued the mandate in respect of the ET and Comity Decision, *In re Picard*, No. 17-2992 (2d Cir. June 1, 2010), ECF Doc No. 1582, vacating the judgments of the Bankruptcy Court in connection with the Bankruptcy Court ET Decision and remanding the matters for further proceedings consistent with this Second Circuit's ET and Comity Decision;

WHEREAS, on August 30, 2021, the Second Circuit issued a consolidated decision in the Good Faith Appeals. *See In re BLMIS LLC*, 12 F.4th 171 (2d Cir. 2021) (the "Good Faith Decision"); and

WHEREAS, on October 13, 2021, the Court of Appeals for the Second Circuit issued the mandate in respect of the Good Faith Decision, vacating the District Court's consolidated good faith decision, *SIPC v. BLMIS*, 516 B.R. 18 (S.D.N.Y. 2014), as well as the Bankruptcy Court's decisions dismissing *Picard v. Citibank, N.A.*, Adv. Pro. No. 10-05345 (CGM) and *Picard v.*

Legacy Capital Ltd., Adv. Pro. No. 10-05286 (CGM). See Mandate, Case No. 20-1333 (2d Cir. Oct. 13, 2021), ECF No. 197; Mandate, Case No. 20-1334 (2d Cir. Oct 13, 2021), ECF No. 187;

IT IS HEREBY STIPULATED AND AGREED, that Defendant shall respond to the complaint in the Action, Adv. Pro. No. 11-02551 (Bankr. S.D.N.Y. Aug. 25, 2011), ECF No. 1, by April 29, 2022. If Defendant files a motion to dismiss the complaint, such motion shall set forth any and all grounds for dismissal at the pleading stage. The Trustee shall respond to the motion by June 24, 2022, and Defendant shall file its reply by July 25, 2022.

[Remainder of Page Intentionally Left Blank]

IT IS HEREBY STIPULATED AND AGREED, that if Defendant files such a motion to dismiss the complaint, then the parties shall seek oral argument on the motion at the Court's first available convenience.

Dated: January 14, 2022
New York, New York

By: /s/ David J. Sheehan
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Nicholas J. Cremona
Email: ncremona@bakerlaw.com
Marshall J. Mattera
Email: mmattera@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for
the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and the Estate
of Bernard L. Madoff*

SO ORDERED.

By: /s/ James L. Bromley
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
James L. Bromley
Email: bromleyj@sullcrom.com
Samantha L. Fidler
Email: fidlers@sullcrom.com

*Attorneys for Defendant Delta National Bank
and Trust Company*

Dated: January 19, 2022
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge